

ORR State Letter

05 - 03

Date: March 1, 2005

TO: STATE REFUGEE COORDINATORS
NATIONAL VOLUNTARY AGENCIES
OTHER INTERESTED PARTIES

FROM: Nguyen Van Hanh, Ph.D.
Director
Office of Refugee Resettlement

SUBJECT: Release of Individuals Previously Held in “Indefinite Detention”

Purpose of this Letter

This State Letter is intended to provide information regarding eligibility for Office of Refugee Resettlement (ORR) benefits and services for individuals who are released from “indefinite detention”. This State Letter will supersede the information previously provided in State Letter #02-03.

Background

State Letter #02-03 discussed the U.S. Supreme Court decision, *Zadvydas v. Davis* ⁽¹⁾ and the ramifications the ruling had on “indefinite detainees” or “lifers”. The terms “indefinite detainees” or “lifers” are used to identify non-citizens who have received a final order of removal after serving a sentence for a criminal conviction, but remain in federal custody because their home country will not accept their return. In the *Zadvydas* decision the Supreme Court held that post-removal detention should be limited to a reasonable period of time necessary to facilitate the individual’s removal from the United States. Following the *Zadvydas* decision, it was unclear as to whether or not the Court’s ruling was applicable to all non-citizens or just to those who had been admitted to the U.S. This question was answered by the recent Supreme Court decision, *Clark v. Martinez*. ⁽²⁾ In *Martinez*, the Court held that the post-removal guidelines set forth in the earlier *Zadvydas* decision are applicable to all aliens. As a result of this ruling, it is anticipated that approximately 900 individuals, largely Cuban entrants, who were previously held in “indefinite detention” will be released from federal custody.

Eligibility for ORR Benefits and Services

Some individuals released from indefinite detention by federal immigration authorities may meet the definition of a refugee ⁽³⁾ or of a Cuban/Haitian entrant. ⁽⁴⁾ Eligibility guidelines for ORR benefits and services are not affected by the *Zadvydas* and *Martinez*

decisions. Service-providers are encouraged to review State Letter #00-17 “Status and Documentation Requirements for the Federal Refugee Resettlement Program.”

The date that an individual initially attains the requisite status (5) shall be used as the commencement date for time-limited ORR benefits and services. For example, assume a Cuban entrant was initially paroled into the United States on June 1, 1980 and was incarcerated on December 1, 1982, following a criminal conviction. If this individual was paroled pursuant to the Martinez decision on March 1, 2005, the date of eligibility for ORR benefits and services would begin on June 1, 1980.

It is anticipated that many who have been in indefinite detention will no longer be eligible for time-limited ORR benefits and services, such as Refugee Cash or Medical Assistance (8 months), or social services (5 years). However many of those applicants will remain eligible for certain discretionary ORR programs that are not time-limited.

Process for Determining Status and Eligibility

Prior to providing benefits and services, agencies must determine the applicant’s identity, immigration status, date of initial eligibility, and when applicable, nationality (Cuban/Haitian entrants). ORR understands that it may be difficult for benefit-granting agencies to ascertain applicant eligibility for certain populations of indefinite detainees, such as Cuban/Haitian entrants. Documentation typically used to determine an applicant’s original immigration status may no longer be available. In some cases, the Systematic Alien Verification for Entitlements (SAVE) system may be unable to provide the necessary information and the more detailed G-845 secondary verification procedure may ultimately be inconclusive.

If a service-provider is having difficulty determining the status of an individual who has been released from indefinite detention, please contact Paul E. Gleason at (202) 401-4604 or pgleason@acf.hhs.gov.

(1) *Zadvydas v. Davis*, 533 U.S. 678 (2001)

(2) *Clark v. Martinez*, 125 S.Ct. 716 (2005)

(3) Refugee Act of 1980, Pub. L. 96-212, as amended (8 U.S.C. 1521)

(4) Refugee Education Assistance Act of 1980, title V, Pub. L. 96-422, as amended (8 U.S.C. 1522 note)

(5) See: 45 CFR §400.43(a)(1)-(6); State Letters #01-13, #04-12 and #00-17

Individuals with the following statuses are eligible for Refugee Resettlement Program benefits:

1. Individuals paroled as refugees or asylees under §212(d)(5) of the Immigration and Nationality Act (INA)
2. Refugees admitted under §207 of the INA
3. Asylees whose status was granted under §208 of the INA
4. Cuban and Haitian entrants, in accordance with the requirements in 45 CFR §401.2

- a. Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided
 - b. A national of Cuba or Haiti who was paroled into the United States and has not acquired any other status under the INA and with respect to whom a final, nonappealable, and legally enforceable order of removal, deportation or exclusion has not been entered
 - c. A national of Cuba or Haiti who is the subject of removal, deportation or exclusion proceedings under the INA and with respect to whom a final, nonappealable, and legally enforceable order of removal, deportation or exclusion has not been entered
 - d. A national of Cuba or Haiti who has an application for asylum pending with the INS and with respect to whom a final, nonappealable, and legally enforceable order of removal, deportation or exclusion has not been entered
5. Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in §101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Public Law 100-461 as amended)
 6. Lawful permanent residents, provided the individuals previously held one of the statuses identified above (Note: Amerasians are admitted as lawful permanent residents. See #5 above.)
 7. Victims of a Severe Form of Trafficking as defined in the Trafficking Victims Protection Act of 2000, Pub. L. 106-386, Oct. 28, 2000 (as reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, December 19, 2003)(22 U.S.C. 7103).